Supreme Court, U.S.
FILED
MAY 2 1997
CLERK

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NO. 96-1576

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

DARRELL L. WESSELS,

Petitioner,

v.

STATE OF IOWA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF IOWA

RESPONDENT'S BRIEF

IN OPPOSITION

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19 pp

COUNTER STATEMENT OF QUESTION PRESENTED FOR REVIEW

I. WHETHER THE IOWA SUPREME COURT DECISION INVOLVING A QUESTION OF THE APPLICATION OF THE FACTS TO AN IOWA CRIMINAL STATUTE VIOLATES THE FEDERAL DUE PROCESS RIGHT OF DEFENDANT.

TABLE OF CONTENTS

	Page
Counter Statement of Question Presented for Review	i
Table of Authorities	iii
Opinion Below	1
Statement of the Case	3
Summary of the Argument	8
Reasons for Denying the Writ . . .	10

TABLE OF AUTHORITIES

Page

In Re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) 10

Iowa Code § 714.1(1) (1993) 11

Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) 11

OPINION BELOW

On December 1, 1994, a jury convicted Wessels of first-degree theft and Wessels appealed his conviction to the Iowa Supreme Court. In the appeal, Wessels raised five claims: (1) the sufficiency of the evidence; (2) the testimony as to value of the item stolen; (3) the district court's instructions to the jury; (4) the district court's denial of Wessels' motion for a new trial; (5) and the sentence imposed. The Iowa Supreme Court transferred the case to the Iowa Court of Appeals.

On August 30, 1996, the Iowa Court of Appeals affirmed Wessels' conviction as to all issues raised. In its decision, the Iowa Court of Appeals specifically addressed the issue Wessels raises before this Court. That is, the

Iowa Court of Appeals found that there was sufficient evidence of Wessels' intent to deprive the State of Iowa of its property, a transmitter.

Wessels sought further review of the Iowa Court of Appeals decision by the Iowa Supreme Court. On November 1, 1996, the Iowa Supreme Court, after considering the application en banc, denied Wessels' application for further review.

STATEMENT OF THE CASE

In the fall of 1994, the Iowa Division of Criminal Investigation (DCI) began an investigation into Wessels' business activities. Petitioner's Appendix p. 7 (hereafter Pet. App. ___). Dennis Gabel, an employee of Wessels', assisted the DCI with its investigation. Pet. App. p. 7.

On September 12, 1994, Gabel learned Wessels wanted to speak to him and Gabel informed the DCI of Wessels' wishes. Pet. App. p. 7. Gabel also decided to wear a body transmitter for his protection during his meeting with Wessels. Pet. App. p. 7.

The next day, wired with a transmitter, Gabel went to Wessels' home in rural Orchard, Iowa to talk to Wessels. Pet. App. p. 7. The two men

walked from Wessels' home to an office located on Wessels' property. Pet. App. p. 19. Once inside the office, Wessels and Gabel engaged in a thirty to forty-five minute conversation. Wessels asked Gabel several questions, all revolving around the DCI investigation of Wessels.

Specifically, Wessels was concerned about two matters; clipping ear tags and falsifying the weight of pigs. Pet. App. p. 20. Wessels also wanted to know who Gabel talked to about clipping ear tags and what he said. Wessels further inquired as to whether the DCI asked Gabel if he had ever bumped the weight of pigs. When Gabel responded that he had, and that he had done so at the request of Wessels, Wessels became irritated and challenged Gabel's recollection. Pet. App. p. 20.

Wessels informed Gabel of the consequences he (Gabel) would face by cooperating with the DCI. Wessels threatened to "prosecute" Gabel and told him (Gabel) there would be no trouble as long as Wessels did not get into trouble. Shortly thereafter, Wessels ordered Gabel to stand up and frisked Gabel to see if he was wearing a "bug." Upon discovering the transmitter, Wessels ripped the transmitter microphone off of Gabel's chest and tried to pull the rest of the wires out of Gabel's boot, but they would not come. Pet. App. p. 7. Wessels grabbed a pair of side cutters and was going to cut the microphone when Gabel, frightened for his own safety because of Wessels' temper, agreed to remove the transmitter. Pet. App. p. 7. When Gabel took the transmitter off, Wessels grabbed

it and walked away. Pet. App. p. 7. Gabel asked Wessels for the transmitter, but Wessels refused and told Gabel to leave. Pet. App. p. 7. Wessels took the transmitter and tossed it into a corn field off of his property. Pet. App. p. 7.

When Gabel left Wessels' office, he drove to an area where he met with representatives of the DCI. Pet. App. p. 7. After meeting with Gabel, DCI Special Agent Richard Searl went to Wessels' residence and asked for the transmitter. Pet. App. p. 7. Wessels claimed not to have it anymore and did not know where it was. After Wessels refused to return the transmitter, Special Agent Searl arrested him. Pet. App. p. 7.

The State of Iowa charged Wessels with first-degree theft and second-degree

theft in violation of Iowa Code sections 714.2 (1993). A jury convicted Wessels on both counts; however, the charges merged for sentencing purposes and the district court entered a conviction for the first-degree theft charge only. The district court sentenced Wessels to an indeterminate ten-year sentence. Wessels requested that the district court reconsider the sentence imposed. After reconsidering Wessels' sentence, the district court ordered Wessels to be released on probation for five years. App. A.

SUMMARY OF THE ARGUMENT

Wessels alleges that he was denied due process of law because the State of Iowa failed to prove beyond a reasonable doubt that Wessels intended to deprive the State of Iowa of its property. This Court must deny review because Wessels' challenge does not meet the criteria for certiorari under Supreme Court Rule 10. Wessels' claim involves a question of the interpretation of an Iowa criminal statute to the facts of this case. As such, a United States court of appeals has not rendered a decision which conflicts with the decision of another United States court of appeals. Sup. Ct. R. 10(a). Similarly, the Iowa appellate courts have not decided a question of federal law which conflicts with the decision of another state court or of a

United States court of appeals. Sup. Ct. R. 10(b). Finally, because this case involves only a question of state law, the Iowa courts have not decided an important question of federal law which should be settled by this Court. Sup. Ct. R. 10(c).

ARGUMENT

REASON FOR DENYING THE WRIT

WESSELS' CLAIM RAISES NO IMPORTANT ISSUE OF FEDERAL LAW AND SHOULD NOT BE CONSIDERED.

Wessels alleges that he was denied due process of law because the State failed to show beyond a reasonable doubt that he had the intent to deprive the State of Iowa of its property, namely a transmitter. This Court should deny review because there is no issue of federal law.

It is important to note that Wessels does not assert that the Iowa district court failed to instruct the jury that it must convict him beyond a reasonable doubt. In Re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) (the due process clause protects the accused against conviction except upon proof

beyond a reasonable doubt). Rather, Wessels' claim focuses only on the evidence adduced at trial relative to the element of Wessels' intent to deprive under Iowa's theft statute, Iowa Code section 714.1(1) (1993). Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) (the relevant question in a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt). To address Wessels' claim, this Court must make a fact-specific finding which has no applicability outside of this case. Further, the facts as stated by Wessels in his petition for writ of certiorari

are inaccurate and one-sided and omit key facts relied on by the Iowa Court of Appeals in its decision. This case does not present an important question of federal law and certiorari should be denied.

Appendix A-1

RULING ON REQUEST FOR RECONSIDERATION
(Mitchell Cty. No. 4149 & 4167)
(filed 4/25/97)

BE IT REMEMBERED that on the 25th day of April, 1997, the above-entitled matter came on for hearing on the REQUEST TO THE SENTENCING JUDGE FOR RECONSIDERATION filed by the defendant on February 27, 1997. The defendant was present and represented by his attorney, Judith O'Donohoe. The State of Iowa was represented by Assistant County Attorney Mark Walk.

For the reasons stated by the court on the record at the time of hearing, the court finds that the request for reconsideration should be granted. The judgments and sentences previously entered by the court on June 20, 1995, are hereby reconsidered.

Appendix A-2

ORDER

IT IS THEREFORE ORDERED as follows:

1. In Cause No. 4167, the defendant is committed into the custody of the Director of the Iowa Department of Corrections for an indeterminate term not to exceed five years. That sentence shall be suspended, however, and the defendant is placed on probation to the Department of Correctional Services for a period not to exceed five years.

2. In Cause No. 4149, the defendant is committed into the custody of the Director of the Iowa Department of Corrections for an indeterminate term not to exceed ten years. That sentence shall be suspended, however, and the defendant is placed on probation to the Department of Correctional Services for a period not to exceed five years.

3. As a specific condition of probation the defendant shall pay the court costs in these two actions, pursuant to a plan of payment entered into with his probation officer. The court costs shall include the sum of $1,250 toward the defendant's attorney fees, a previously ordered by the court on April 7, 1995.

The total court costs, including those associated with this hearing, shall be assessed against the defendant, as determined by the Clerk of Court in the amount of $977.52 (Total) + $1250.00.

Dated this 25th day of April, 1997.

\s\ Jon Stuart Scoles
Judge of the Second
Judicial District of Iowa